



# DRAFT DETERMINATION

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2014/287)

### **SURVEYING AWARD 2010**

[MA000066]

Technical services

JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER BISSETT

PLACE, XX MONTH YEAR

*4 yearly review of modern awards – Surveying Award 2010 – modern award varied.*

A. Further to the decision [[YEAR] FWCFB XXXX] issued by the Full Bench of the Fair Work Commission on XX MONTH YEAR, the *Surveying Award 2010* is varied as follows:

1. By deleting all clauses, schedules and appendices.
2. By inserting the clauses and schedules attached.

B: This determination comes into operation from [XX MONTH YEAR]. In accordance with s.165(3) of the *Fair Work Act 2009*, this determination does not take effect until the start of the first full pay period that starts on or after [XX MONTH YEAR].

PRESIDENT

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# Surveying Award 20XX

## Table of Contents

	Page
<b>Part 1— Application and Operation of this award .....</b>	<b>3</b>
1. Title and commencement .....	3
2. Definitions .....	3
3. The National Employment Standards and this award .....	4
4. Coverage.....	4
5. Individual flexibility arrangements .....	5
6. Requests for flexible working arrangements.....	6
7. Facilitative provisions .....	8
<b>Part 2— Types of Employment and Classifications.....</b>	<b>9</b>
8. Types of employment.....	9
9. Full-time employees .....	9
10. Part-time employees .....	10
11. Casual employees .....	10
12. Professional development.....	12
13. Classifications .....	12
<b>Part 3— Hours of Work.....</b>	<b>13</b>
14. Ordinary hours of work .....	13
15. Rostering arrangements—full-time and part-time employees .....	13
16. Breaks.....	14
<b>Part 4— Wages and Allowances .....</b>	<b>14</b>
17. Minimum rates .....	14
18. Payment of wages.....	16
19. Allowances .....	17
20. Superannuation.....	18
<b>Part 5— Overtime and Penalty Rates.....</b>	<b>19</b>
21. Overtime and penalty rates.....	19
<b>Part 6— Leave and Public Holidays.....</b>	<b>22</b>
22. Annual leave.....	22
23. Personal/carer’s leave and compassionate leave .....	26
24. Parental leave and related entitlements .....	26

25.	Community service leave.....	26
26.	Unpaid family and domestic violence leave .....	26
27.	Public holidays.....	26
<b>Part 7— Consultation and Dispute Resolution .....</b>		<b>27</b>
28.	Consultation about major workplace change.....	27
29.	Consultation about changes to rosters or hours of work.....	28
30.	Dispute resolution .....	28
<b>Part 8— Termination of Employment and Redundancy .....</b>		<b>29</b>
31.	Termination of employment .....	29
32.	Redundancy .....	30
<b>Schedule A —Classification Structure and Definitions.....</b>		<b>32</b>
<b>Schedule B —Summary of Hourly Rates of Pay.....</b>		<b>42</b>
<b>Schedule C —Summary of Monetary Allowances.....</b>		<b>44</b>
<b>Schedule D —School-based Apprentices.....</b>		<b>45</b>
<b>Schedule E —Supported Wage System.....</b>		<b>46</b>
<b>Schedule F —Agreement for Time Off Instead of Payment for Overtime.....</b>		<b>49</b>
<b>Schedule G —Agreement to Take Annual Leave in Advance .....</b>		<b>50</b>
<b>Schedule H —Agreement to Cash Out Annual Leave.....</b>		<b>51</b>
<b>Schedule I —Part-day Public Holidays.....</b>		<b>52</b>

## Part 1—Application and Operation of this award

### 1. Title and commencement

- 1.1 This award is the *Surveying Award 20XX*.
- 1.2 This modern award commenced operation on 1 January 2010. The terms of the award have been varied since that date.
- 1.3 A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

### 2. Definitions

In this award, unless the contrary intention appears:

**Act** means the *Fair Work Act 2009* (Cth)

**defined benefit member** has the meaning given by the *Superannuation Guarantee (Administration) Act 1992* (Cth)

**employee** means national system employee within the meaning of the [Act](#)

**employer** means national system employer within the meaning of the [Act](#)

**exempt public sector superannuation scheme** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**Graduate surveyor** means a person who possesses a bachelor degree in a relevant spatial discipline and who is eligible for admission as an Associate Member—Graduate of the Surveying and Spatial Sciences Institute

**Licensed/Registered surveyor** is an employee who is required to be registered in accordance with the provisions of relevant legislation, and/or endorsed (if required), and qualified to carry out surveying duties

**MySuper product** has the meaning given by the *Superannuation Industry (Supervision) Act 1993* (Cth)

**NES** means the [National Employment Standards](#) as contained in sections 59 to 131 of the [Act](#)

**on-hire** means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client

**professional surveying duties** means duties carried out by a person with Graduate qualifications acceptable to Surveying and Spatial Sciences Institute for admission to the grade of Associate member

**Professional surveyor** has the meaning given in clause 4.2

**standard rate** means the minimum hourly rate for a Level 10 in clause 17.1(a)

### **3. The National Employment Standards and this award**

- 3.1** The [National Employment Standards](#) (NES) and this award contain the minimum conditions of employment for employees covered by this award.
- 3.2** Where this award refers to a condition of employment provided for in the [NES](#), the [NES](#) definition applies.
- 3.3** The employer must ensure that copies of the award and the [NES](#) are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

### **4. Coverage**

- 4.1** This occupational award covers employers throughout Australia who employ professional surveyors and other employees in the classifications listed in Schedule A—Classification Structure and Definitions and their employees to the exclusion of any other modern award.
- 4.2** **Professional surveyor** means an employee qualified to carry out professional surveying duties as defined. The term Professional surveyor will include Graduate surveyor and Licensed/Registered surveyor and other Professional surveyors whose field of surveying does not require formal registration.
- 4.3** This award covers any employer which supplies on-hire employees in classifications set out in Schedule A—Classification Structure and Definitions and those on-hire employees, if the employer is not covered by another modern award containing a classification which is more appropriate to the work performed by the employee. Clause 4.3 operates subject to the exclusions from coverage in this award.
- 4.4** This award covers employers which provide group training services for trainees engaged in any of the classifications set out in Schedule A—Classification Structure and Definitions and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. Clause 4.4 operates subject to the exclusions from coverage in this award.
- 4.5** This award does not cover employees of a local government covered by another award.
- 4.6** This award does not cover:
- (a)** an employee excluded from award coverage by the [Act](#);
  - (b)** employees who are covered by a modern enterprise award, or an enterprise instrument (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees; or
  - (c)** employees who are covered by a State reference public sector modern award, or a State reference public sector transitional award (within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth)), or employers in relation to those employees.

- 4.7 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.

## **5. Individual flexibility arrangements**

- 5.1 Despite anything else in this award, an employer and an individual employee may agree to vary the application of the terms of this award relating to any of the following in order to meet the genuine needs of both the employee and the employer:

- (a) arrangements for when work is performed; or
- (b) overtime rates; or
- (c) penalty rates; or
- (d) allowances; or
- (e) annual leave loading.

- 5.2 An agreement must be one that is genuinely made by the employer and the individual employee without coercion or duress.

- 5.3 An agreement may only be made after the individual employee has commenced employment with the employer.

- 5.4 An employer who wishes to initiate the making of an agreement must:

- (a) give the employee a written proposal; and
- (b) if the employer is aware that the employee has, or reasonably should be aware that the employee may have, limited understanding of written English, take reasonable steps (including providing a translation in an appropriate language) to ensure that the employee understands the proposal.

- 5.5 An agreement must result in the employee being better off overall at the time the agreement is made than if the agreement had not been made.

- 5.6 An agreement must do all of the following:

- (a) state the names of the employer and the employee; and
- (b) identify the award term, or award terms, the application of which is to be varied; and
- (c) set out how the application of the award term, or each award term, is varied; and
- (d) set out how the agreement results in the employee being better off overall at the time the agreement is made than if the agreement had not been made; and
- (e) state the date the agreement is to start.

- 5.7 An agreement must be:

- (a) in writing; and

(b) signed by the employer and the employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

**5.8** Except as provided in clause 5.7(b), an agreement must not require the approval or consent of a person other than the employer and the employee.

**5.9** The employer must keep the agreement as a time and wages record and give a copy to the employee.

**5.10** The employer and the employee must genuinely agree, without duress or coercion to any variation of an award provided for by an agreement.

**5.11** An agreement may be terminated:

(a) at any time, by written agreement between the employer and the employee; or

(b) by the employer or employee giving 13 weeks' written notice to the other party (reduced to 4 weeks if the agreement was entered into before the first full pay period starting on or after 4 December 2013).

NOTE: If an employer and employee agree to an arrangement that purports to be an individual flexibility arrangement under this award term and the arrangement does not meet a requirement set out in section 144 then the employee or the employer may terminate the arrangement by giving written notice of not more than 28 days (see section 145 of the [Act](#)).

**5.12** An agreement terminated as mentioned in clause 5.11(b) ceases to have effect at the end of the period of notice required under that clause.

**5.13** The right to make an agreement under clause 5 is additional to, and does not affect, any other term of this award that provides for an agreement between an employer and an individual employee.

## **6. Requests for flexible working arrangements**

### **6.1 Employee may request change in working arrangements**

Clause 6 applies where an employee has made a request for a change in working arrangements under section 65 of the [Act](#).

NOTE 1: Section 65 of the [Act](#) provides for certain employees to request a change in their working arrangements because of their circumstances, as set out in section 65(1A). Clause 6 supplements or deals with matters incidental to the [NES](#) provisions.

NOTE 2: An employer may only refuse a section 65 request for a change in working arrangements on 'reasonable business grounds' (see section 65(5) and (5A)).

NOTE 3: Clause 6 is an addition to section 65.

### **6.2 Responding to the request**

Before responding to a request made under section 65, the employer must discuss the request with the employee and genuinely try to reach agreement on a change in

working arrangements that will reasonably accommodate the employee's circumstances having regard to:

- (a) the needs of the employee arising from their circumstances;
- (b) the consequences for the employee if changes in working arrangements are not made; and
- (c) any reasonable business grounds for refusing the request.

NOTE 1: The employer must give the employee a written response to an employee's section 65 request within 21 days, stating whether the employer grants or refuses the request (section 65(4)).

NOTE 2: If the employer refuses the request, then the written response must include details of the reasons for the refusal (section 65(6)).

### **6.3 What the written response must include if the employer refuses the request**

- (a) Clause 6.3 applies if the employer refuses the request and has not reached an agreement with the employee under clause 6.2.
- (b) The written response under section 65(4) must include details of the reasons for the refusal, including the business ground or grounds for the refusal and how the ground or grounds apply.
- (c) If the employer and employee could not agree on a change in working arrangements under clause 6.2, then the written response under section 65(4) must:
  - (i) state whether or not there are any changes in working arrangements that the employer can offer the employee so as to better accommodate the employee's circumstances; and
  - (ii) if the employer can offer the employee such changes in working arrangements, set out those changes in working arrangements.

### **6.4 What the written response must include if a different change in working arrangements is agreed**

If the employer and the employee reached an agreement under clause 6.2 on a change in working arrangements that differs from that initially requested by the employee, then the employer must provide the employee with a written response to their request setting out the agreed change(s) in working arrangements.

### **6.5 Dispute resolution**

Disputes about whether the employer has discussed the request with the employee and responded to the request in the way required by clause 6, can be dealt with under clause 30—Dispute resolution.



## 7. Facilitative provisions

### 7.1 Agreement to vary award provisions

- (a) This award contains facilitative provisions which allow agreement between an employer and employees on how specific award provisions are to apply at the workplace or section or sections of it. The facilitative provisions are identified in clauses 7.2(a) and 7.3(a).
- (b) The specific award provisions establish both the standard award conditions and the framework within which agreement can be reached as to how the particular provisions would be applied in practice.
- (c) Facilitative provisions are not a device to avoid award obligations, nor should they result in unfairness to an employee or employees covered by this award.

### 7.2 Facilitation by individual agreement

- (a) The following facilitative provisions can be utilised upon agreement between an employer and an employee provided that the agreement complies with clause 7.2(b):

Clause title	Clause number
Part-time hours and variations to them	10.2
Accumulation of rostered days off	15.3
Meal breaks	16.1(a)
Monthly payment of wages	18.1
Method of payment of wages	18.2
Travelling time payment	19.5(b)
Time off instead of overtime	21.2
Alternatives to time off instead of overtime	21.2
Change to meal break on overtime	21.6(a)
Annual leave in advance	22.3
Cashing out of annual leave	22.8
Substitution of public holidays	27.3

- (b) The agreement reached must be kept by the employer as a time and wages record.

### 7.3 Facilitation by majority agreement

- (a) The following facilitative provisions can be utilised only upon agreement between the employer and the majority of employees in the workplace or section or sections of it, provided the requirements of clauses 7.2(b), 7.3(b) and 7.3(c) have been met.

Clause title	Clause number
Spread of hours	14.2
Spread of hours during daylight saving	14.3

<b>Clause title</b>	<b>Clause number</b>
Working less than 5 days	15.1
Change to rostered day off	15.1

- (b) Where agreement has been reached with the majority of employees in the workplace, or a section or sections of it, to implement a facilitative provision in clause 7.3(a), that agreement is binding on all such employees.
- (c) If there are employees of the enterprise covered by this award who are members of a union, the employer must inform the union/s of the intention to use the facilitative provision and the union/s must be given a reasonable opportunity to participate in negotiations regarding its use. Union involvement in this process does not mean that the consent of the union is required prior to the introduction of agreed facilitative arrangements at the enterprise.
- (d) A vote of employees in the workplace, a section or sections of it, taken in accordance with clause 7.3, to determine if there is a majority employee support for implementation of a facilitative provision, will be of no effect unless taken with the agreement of the employer.

## **Part 2—Types of Employment and Classifications**

### **8. Types of employment**

**8.1** Employees under this award are to be employed in one of the following categories:

- (a) full-time;
- (b) part-time; or
- (c) casual.

**8.2** At the time of engagement the employer must inform each employee in writing of the terms of their engagement and classification.

**8.3** Length of service for the purposes of all termination payments under this award are calculated on the basis of the total of:

- (a) all periods of full-time employment; and
- (b) all periods of part-time employment being converted to the pro rata full-time equivalent.

### **9. Full-time employees**

Any employee not specifically engaged as being a part-time or casual employee is for all purposes of this award a full-time employee, unless otherwise specified in the award.

## **10. Part-time employees**

- 10.1** A part-time employee is an employee engaged specifically to regularly work less hours per day or week than a full-time employee on specific days and hours.
- 10.2** The specified days and hours, as agreed in writing at the commencement of engagement, cannot be altered without mutual agreement between the employer and employee and any variation must be recorded in writing.
- 10.3** An employer is required to roster a part-time employee for a minimum of 3 consecutive hours for any shift.
- 10.4** For each ordinary hour worked, a part-time employee will be paid the minimum hourly rate prescribed for the work performed.
- 10.5** The terms of this award will apply pro rata to part-time employees on the basis that ordinary weekly hours for full-time employees are 38.
- 10.6** The rates for overtime, Sunday and public holiday work apply respectively for time worked in excess of the specified hours in accordance with clause 10.2.
- 10.7** An employee whose employment is terminated while working:
- (a) part-time after converting from full-time; or
  - (b) full-time after converting or reverting from part-time;
- is entitled to all termination payments under this award at the full-time rate of pay applying to their work.

## **11. Casual employees**

- 11.1** A casual employee means an employee specifically engaged as a casual employee.
- 11.2** For each ordinary hour worked, a casual employee will be paid the minimum hourly rate for the work performed. In addition, a casual employee will receive a **25%** loading.
- 11.3** A casual employee must be engaged and paid for at least 2 consecutive hours of work on each occasion they are required to attend work.
- 11.4 Right to request casual conversion**
- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
  - (b) A **regular casual employee** is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
  - (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.

- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under clause 11.4 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
  - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award – that is, the casual employee is not truly a regular casual employee as defined in 11.4(b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be accommodated within the days and/or hours during which the employee is available to work.
- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.
- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 30—Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.4, the employer and employee must discuss and record in writing:
  - (i) the form of employment to which the employee will convert – that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clause 10.2.

- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.4.
- (o) Nothing in clause 11.4 obliges a regular casual employee to convert to full-time or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.4 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.4 within the first 12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.4 by 1 January 2019.
- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.4(q)

## **12. Professional development**

- 12.1 It is the responsibility of the employees to keep themselves informed of developments in their profession, and to develop their professional knowledge and ability and it is appropriate for employees to be encouraged to undertake self-development programs.
- 12.2 Where the employee and the employer agree that an activity be undertaken by the employee as a component of a structured training program or otherwise, the employer will meet all costs associated with the training.

## **13. Classifications**

- 13.1 The classification structure and definitions for employees covered by this award are set out in Schedule A—Classification Structure and Definitions.

### **13.2 Disclosure of qualifications**

An employee who is employed in, or who is an applicant for employment covered by this award will, if and when required to do so by their employer or an employer to whom they have applied for employment, produce to their employer or prospective employer written evidence that they possess or have acquired the qualifications necessary for the classification applied for.

## **Part 3—Hours of Work**

### **14. Ordinary hours of work**

**14.1** The ordinary hours of work must not exceed an average of 38 per week and must be worked between 6.00 am and 6.00 pm Monday to Friday inclusive.

**14.2** The actual hours within the spread of hours may be altered by mutual agreement between the employer and the majority of employees concerned in the establishment or section or sections concerned.

**14.3** During periods when daylight saving is in operation the spread of hours may be 5.00 am to 5.00 pm where there is agreement between the employer and the majority of employees affected.

### **15. Rostering arrangements—full-time and part-time employees**

#### **15.1 Rostered day off**

The employer and the majority of the employees concerned in the establishment or section or sections concerned may agree that the ordinary working hours be worked to enable a weekday to be taken off on a basis to be mutually agreed.

#### **15.2 Notice of rostered days off**

**(a)** The employer must advise the employee at least 4 weeks in advance of the weekday to be taken off.

**(b)** Rostered days off will be subject to the operational needs of the establishment and having regard to urgent and unforeseen circumstances in which case a substitute day must be arranged by mutual agreement.

#### **15.3 Accumulation of days off**

Where agreed with the employer, an employee may accumulate up to 5 days' leave to be taken when mutually convenient.

#### **15.4 Rostered days off—building and construction industry**

Where employees subject to this award perform survey work on a recognised building and construction industry site, those employees may work on a prescribed rostered day off which is applicable to that particular site under the following circumstances:

**(a)** where that is required by the employer and the work is necessary to allow other employees to be employed productively;

**(b)** to carry out out-of-hours maintenance;

**(c)** because of unforeseen delays to a particular project or a section of it; or

**(d)** for other reasons arising from unforeseen or emergency circumstances on a project.

## 16. Breaks

### 16.1 Meal break

- (a) An employee will be allowed an unpaid meal break of between 30 minutes and one hour each day, as mutually agreed.
- (b) An employee must not be required to work for more than 5 hours without a break for a meal.

### 16.2 Morning and afternoon tea break

- (a) An employee is allowed a rest period of 10 minutes without deduction of pay in the morning at a time fixed by the employer.
- (b) An employee is permitted, without ceasing work, to take an afternoon tea break.

## Part 4—Wages and Allowances

## 17. Minimum rates

### 17.1 Adult rates

- (a) The classification structure listed below is to be read in conjunction with Schedule A—Classification Structure and Definitions.

<b>Wage group</b>	<b>Minimum weekly rate \$ (full-time employee)</b>	<b>Minimum hourly rate \$</b>
Level 12	762.10	20.06
Level 11	805.50	21.20
Level 10	862.50	22.70
Level 9	916.60	24.12
Level 8	988.80	26.02
Level 7	1009.00	26.55
Level 6	1036.10	27.27
Level 5	1090.40	28.69
Level 4	1117.60	29.41
Level 3	1166.40	30.69
Level 2	1274.90	33.55
Level 1	1437.60	37.83

See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay including overtime and penalties.

**17.2 Junior rates**

The rate for juniors is the appropriate percentage of the Level 10 rate in accordance with clause 17.1, as follows:

<b>Age</b>	<b>% of Level 10 rate</b>
17	52
18	62
19	75
20	88

**17.3** Employees who possess relevant technical qualifications without relevant work experience on commencement of employment under this award are paid in accordance with clause 17.5.

**17.4** Professional surveyors/Licensed surveyors receive incremental advancement in accordance with clause A.15.2.

**17.5 Phasing in of wage rate of employees without relevant work experience**

An employee who possesses the appropriate level of academic qualifications and who otherwise meets the requirements of the relevant classification, but who is without prior experience in the industry or other relevant work experience, is to be paid in accordance with the following formula:

<b>Qualification</b>	<b>Years of relevant work experience</b>	<b>% of award rate of pay</b>
Diploma	0	77 of Level 7 rate
	1	85 of Level 7 rate
	2	96 of Level 7 rate
	3	100 of Level 7 rate
Advanced diploma	0	72 of Level 5 rate
	1	79 of Level 5 rate
	2	89 of Level 5 rate
	3	93 of Level 5 rate
	4	100 Level 5 rate

**17.6 School-based apprentices**

For school-based apprentices, see Schedule D—School-based Apprentices.

**17.7 Supported wage system**

For employees who because of the effects of a disability are eligible for a supported wage, see Schedule E—Supported Wage System.



## **18. Payment of wages**

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

**18.1** Wages will be paid weekly or fortnightly at the discretion of the employer or monthly by mutual agreement between the employee and the employer.

**18.2** Wages will be paid by mutual agreement between the employee and the employer either in cash, by cheque or by electronic funds transfer into an account nominated by the employee.

**18.3** Payment of wages either by cash or by cheque must be made during working hours.

**18.4** Where it is known that the employee will be absent from their normal workplace on pay day, the employer must make arrangements for the payment of wages no later than the normal pay day.

**18.5** Where an employee is required to work at a location other than their normal place of employment for an extended period, the employer must make prior arrangement for the payment of wages to the employee no later than the normal pay day.

### **18.6 Payment on termination of employment**

**(a)** The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

- (i)** the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and
- (ii)** all other amounts that are due to the employee under this award and the [NES](#).

**(b)** The requirement to pay wages and other amounts under clause 18.6(a) is subject to further order of the Commission and the employer making deductions authorised by this award or the [Act](#).

NOTE 1: Section 117(2) of the [Act](#) provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

NOTE 2: 18.6(b) allows the Commission to make an order delaying the requirement to make a payment under clause 18.6. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the [Act](#) for the Commission to reduce the amount of redundancy pay an employee is entitled to under the [NES](#).

NOTE 3: State and Territory long service leave laws or long service leave entitlements under section 113 of the [Act](#), may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after.

## **19. Allowances**

NOTE: Regulations 3.33(3) and 3.46(1)(g) of *Fair Work Regulations 2009* set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid.

**19.1** Employers must pay to an employee the allowances the employee is entitled to under clause 19. See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances and method of adjustment.

### **19.2 Meal allowance**

- (a) An employee required to work beyond 2 hours after the usual finishing time of work must be paid a meal allowance of **\$12.76** for the meal and for each subsequent meal, or be provided with an adequate meal.
- (b) An employee required to work on a Sunday or public holiday for more than 4 hours must either be supplied with a meal by the employer or paid **\$12.76** for the meal taken during the first and/or subsequent rest break.

### **19.3 Fares**

- (a) If an employee is directed to work at a place other than their usual place of employment all reasonable fares necessarily incurred by them each day in excess of the normal fares of travelling from their home to their usual place of employment and return must be paid by the employer.
- (b) The fare which is payable under clause 19.3(b) must enable them to travel economy class, where available.

### **19.4 Air travel**

Air travel will be economy class. In the case of economy air travel the allowance prescribed in clause 19.2 must be paid for each meal period occurring during the duration of the travel, provided the employee did not receive a meal in flight for each period concerned.

### **19.5 Travelling time payment**

- (a) Where an employee is directed to work at a place other than their usual place of employment, all time occupied by them on any day in travelling which is in excess of the time normally occupied in travelling when working at their usual place of employment is deemed to be working time.
- (b) Where the excess travelling time is in excess of one hour each way, the employer has the option, subject to mutual agreement between the employer and employee concerned, of providing reasonable living away from home expenses for any period in excess of 4 weeks.

### **19.6 Living away from home allowance**

An employee required by their employer to work temporarily away from their usual place of employment and, as a result, is required to sleep away from their usual place of residence, is entitled to the following:

- (a) fares to and from the place at which their employer requires the employee to work;
- (b) all reasonable expenses including board and lodging; and
- (c) payment at ordinary rates of pay for all time spent in travelling between the employee's usual place of employment and the temporary location, such paid time not to exceed 7.6 hours in 24 hours.

## 19.7 Vehicle allowance

In cases where it is mutually agreed that an employee will be required to use their private vehicle during the course of employer's business, an employee must be paid reasonable compensation, but in no case will they receive payment at a rate less than the equivalent of **\$0.78** per kilometre so travelled.

See Schedule C—Summary of Monetary Allowances for a summary of monetary allowances.

## 20. Superannuation

### 20.1 Superannuation legislation

- (a) Superannuation legislation, including the *Superannuation Guarantee (Administration) Act 1992* (Cth), the *Superannuation Guarantee Charge Act 1992* (Cth), the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation (Resolution of Complaints) Act 1993* (Cth), deals with the superannuation rights and obligations of employers and employees. Under superannuation legislation individual employees generally have the opportunity to choose their own superannuation fund. If an employee does not choose a superannuation fund, any superannuation fund nominated in the award covering the employee applies.
- (b) The rights and obligations in these clauses supplement those in superannuation legislation.

### 20.2 Employer contributions

An employer must make such superannuation contributions to a superannuation fund for the benefit of an employee as will avoid the employer being required to pay the superannuation guarantee charge under superannuation legislation with respect to that employee.

### 20.3 Voluntary employee contributions

- (a) Subject to the governing rules of the relevant superannuation fund, an employee may, in writing, authorise their employer to pay on behalf of the employee a specified amount from the post-taxation wages of the employee into the same superannuation fund as the employer makes the superannuation contributions provided for in clause 20.2.

- (b) An employee may adjust the amount the employee has authorised their employer to pay from the wages of the employee from the first of the month following the giving of three months' written notice to their employer.
- (c) The employer must pay the amount authorised under clauses 20.3(a) or (b) no later than 28 days after the end of the month in which the deduction authorised under clauses 20.3(a) or (b) was made.

#### **20.4 Superannuation fund**

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 20.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) to one of the following superannuation funds or its successor:

- (a) AustralianSuper;
- (b) Sunsuper;
- (c) Tasplan;
- (d) Statewide Superannuation Ltd;
- (e) any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before 12 September 2008, provided the superannuation fund is an eligible choice fund and is a fund that offers a MySuper product or is an exempt public sector superannuation scheme; or
- (f) a superannuation fund or scheme which the employee is a defined benefit member of.

#### **20.5 Absence from work**

Subject to the governing rules of the relevant superannuation fund, the employer must also make the superannuation contributions provided for in clause 20.2 and pay the amount authorised under clauses 20.3(a) or (b) while the employee is on any paid leave.

## **Part 5—Overtime and Penalty Rates**

### **21. Overtime and penalty rates**

**21.1** An employer must pay an employee for all authorised time worked in excess of or outside the spread of ordinary hours of duty at the rate of **150%** of the minimum hourly rate for the first 3 hours and **200%** of the minimum hourly rate thereafter.

#### **21.2 Time off instead of payment for overtime**

- (a) An employee and employer may agree in writing to the employee taking time off instead of being paid for a particular amount of overtime that has been worked by the employee.

- (b)** Any amount of overtime that has been worked by an employee in a particular pay period and that is to be taken as time off instead of the employee being paid for it must be the subject of a separate agreement under clause 21.2.
- (c)** An agreement must state each of the following:
  - (i)** the number of overtime hours to which it applies and when those hours were worked;
  - (ii)** that the employer and employee agree that the employee may take time off instead of being paid for the overtime;
  - (iii)** that, if the employee requests at any time, the employer must pay the employee, for overtime covered by the agreement but not taken as time off, at the overtime rate applicable to the overtime when worked;
  - (iv)** that any payment mentioned in clause 21.2 must be made in the next pay period following the request.

NOTE: An example of the type of agreement required by clause 21.2 is set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. There is no requirement to use the form of agreement set out at Schedule F—Agreement for Time Off Instead of Payment for Overtime. An agreement under clause 21.2 can also be made by an exchange of emails between the employee and employer, or by other electronic means.

- (d)** The period of time off that an employee is entitled to take is the same as the number of overtime hours worked.

EXAMPLE: By making an agreement under clause 21.2 an employee who worked 2 overtime hours is entitled to 2 hours' time off.

- (e)** Time off must be taken:
  - (i)** within the period of 6 months after the overtime is worked; and
  - (ii)** at a time or times within that period of 6 months agreed by the employee and employer.
- (f)** If the employee requests at any time, to be paid for overtime covered by an agreement under clause 21.2 but not taken as time off, the employer must pay the employee for the overtime, in the next pay period following the request, at the overtime rate applicable to the overtime when worked.
- (g)** If time off for overtime that has been worked is not taken within the period of 6 months mentioned in clause 21.2(e), the employer must pay the employee for the overtime, in the next pay period following those 6 months, at the overtime rate applicable to the overtime when worked.
- (h)** The employer must keep a copy of any agreement under clause 21.2 as an employee record.
- (i)** An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee to make, or not make, an agreement to take time off instead of payment for overtime.

- (j) An employee may, under section 65 of the [Act](#), request to take time off, at a time or times specified in the request or to be subsequently agreed by the employer and the employee, instead of being paid for overtime worked by the employee. If the employer agrees to the request then clause 21.2 will apply, including the requirement for separate written agreements under clause 21.2(b) for overtime that has been worked.

NOTE: If an employee makes a request under section 65 of the [Act](#) for a change in working arrangements, the employer may only refuse that request on reasonable business grounds (see section 65(5) of the [Act](#)).

- (k) If, on the termination of the employee's employment, time off for overtime worked by the employee to which clause 21.2 applies has not been taken, the employer must pay the employee for the overtime at the overtime rate applicable to the overtime when worked.

NOTE: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 21.2.

### **21.3 Sundays and public holidays**

- (a) An employee must be paid the following rates for work done on Sundays and public holidays, until the employee is relieved from duty:
  - (i) Sunday—**200%** of the minimum hourly rate;
  - (ii) Public holidays (as defined in this award)—**250%** of the minimum hourly rate.
- (b) An employee required to work on a Sunday or public holiday for more than 4 hours:
  - (i) must be allowed a rest break of 20 minutes without deduction of pay after 4 hours of work, if the employee continues work after the rest break; and
  - (ii) must either be supplied with a meal by the employer or paid the meal allowance as set out in clause 19.2(b).

### **21.4 Recall**

An employee recalled to work overtime, after leaving their employer's premises or required to work overtime on a Saturday, Sunday or public holiday must be paid for a minimum of 4 hours' work at the appropriate overtime rate.

### **21.5 Overtime—rest break**

An employee working overtime must be allowed a rest break of 20 minutes (paid for at overtime rates) after each 4 hours of overtime worked if the employee continues to work after the rest break.

### **21.6 Overtime—meal break**

- (a) An employee required to work at least one and a half hours of overtime after working ordinary hours must be allowed a meal break of 20 minutes before starting overtime (paid for at ordinary rates). An employer and employee may

agree to any variation of this provision to meet the circumstances of the work at hand provided that the employer will not be required to make any payment in respect of any time allowed in excess of 20 minutes.

- (b) An employee required to work beyond 2 hours after the usual finishing time of work must be provided with an adequate meal or paid a meal allowance as set out in clause 19.2(a).

#### **21.7 Returning home when normal means of transport is not available**

When an employee working overtime or working on a Sunday or public holiday finishes work at a time when normal means of transport is not available, the employer must provide the employee with a conveyance to their home.

## **Part 6—Leave and Public Holidays**

### **22. Annual leave**

**22.1** Annual leave is provided for in the [NES](#).

NOTE: Where an employee is receiving over-award payments such that the employee's base rate of pay is higher than the rate specified under this award, the employee is entitled to receive the higher rate while on a period of paid annual leave (see sections 16 and 90 of the [Act](#)).

#### **22.2 Annual leave loading**

During a period of annual leave an employee must receive a loading of **17.5%** on the rate of pay they would have been entitled to receive for their ordinary hours had they not been on such leave.

#### **22.3 Annual leave in advance**

- (a) An employer and employee may agree in writing to the employee taking a period of paid annual leave before the employee has accrued an entitlement to the leave.
- (b) An agreement must:
  - (i) state the amount of leave to be taken in advance and the date on which leave is to commence; and
  - (ii) be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.

NOTE: An example of the type of agreement required by clause 22.3 is set out at Schedule G—Agreement to Take Annual Leave in Advance. There is no requirement to use the form of agreement set out at Schedule G—Agreement to Take Annual Leave in Advance.

- (c) The employer must keep a copy of any agreement under clause 22.3 as an employee record.

- (d) If, on the termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken in accordance with an agreement under clause 22.3, the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.

#### **22.4 Excessive leave accruals: general provision**

NOTE: Clauses 22.4 to 22.6 contain provisions, additional to the [NES](#), about the taking of paid annual leave as a way of dealing with the accrual of excessive paid annual leave. See Part 2.2, Division 6 of the [Act](#).

- (a) An employee has an **excessive leave accrual** if the employee has accrued more than 8 weeks' paid annual leave.
- (b) If an employee has an excessive leave accrual, the employer or the employee may seek to confer with the other and genuinely try to reach agreement on how to reduce or eliminate the excessive leave accrual.
- (c) Clause 22.5 sets out how an employer may direct an employee who has an excessive leave accrual to take paid annual leave.
- (d) Clause 22.6 sets out how an employee who has an excessive leave accrual may require an employer to grant paid annual leave requested by the employee.

#### **22.5 Excessive leave accruals: direction by employer that leave be taken**

- (a) If an employer has genuinely tried to reach agreement with an employee under clause 22.4(a) but agreement is not reached (including because the employee refuses to confer), the employer may direct the employee in writing to take one or more periods of paid annual leave.
- (b) However, a direction by the employer under clause 22.5(a):
  - (i) is of no effect if it would result at any time in the employee's remaining accrued entitlement to paid annual leave being less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.4, 22.5 or 22.6 or otherwise agreed by the employer and employee) are taken into account; and
  - (ii) must not require the employee to take any period of paid annual leave of less than one week; and
  - (iii) must not require the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the direction is given; and
  - (iv) must not be inconsistent with any leave arrangement agreed by the employer and employee.
- (c) The employee must take paid annual leave in accordance with a direction under clause 22.5(a) that is in effect.



- (d) An employee to whom a direction has been given under clause 22.5(a) may request to take a period of paid annual leave as if the direction had not been given.

NOTE 1: Paid annual leave arising from a request mentioned in clause 22.5(d) may result in the direction ceasing to have effect. See clause 22.5(b)(i).

NOTE 2: Under section 88(2) of the [Act](#), the employer must not unreasonably refuse to agree to a request by the employee to take paid annual leave.

## **22.6 Excessive leave accruals: request by employee for leave**

- (a) If an employee has genuinely tried to reach agreement with an employer under clause 22.4(a) but agreement is not reached (including because the employer refuses to confer), the employee may give a written notice to the employer requesting to take one or more periods of paid annual leave.
- (b) However, an employee may only give a notice to the employer under clause 22.6(a) if:
  - (i) the employee has had an excessive leave accrual for more than 6 months at the time of giving the notice; and
  - (ii) the employee has not been given a direction under clause 22.5(a) that, when any other paid annual leave arrangements (whether made under clause 22.4, 22.5 or 22.6 or otherwise agreed by the employer and employee) are taken into account, would eliminate the employee's excessive leave accrual.
- (c) A notice given by an employee under clause 22.6(a) must not:
  - (i) if granted, result in the employee's remaining accrued entitlement to paid annual leave being at any time less than 6 weeks when any other paid annual leave arrangements (whether made under clause 22.4, 22.5 or 22.6 or otherwise agreed by the employer and employee) are taken into account; or
  - (ii) provide for the employee to take any period of paid annual leave of less than one week; or
  - (iii) provide for the employee to take a period of paid annual leave beginning less than 8 weeks, or more than 12 months, after the notice is given; or
  - (iv) be inconsistent with any leave arrangement agreed by the employer and employee.
- (d) An employee is not entitled to request by a notice under clause 22.6(a) more than 4 weeks' paid annual leave in any period of 12 months.
- (e) The employer must grant paid annual leave requested by a notice under clause 22.6(a).

## **22.7 Annual leave close-down**

- (a) Where an employer intends temporarily to close (or reduce to nucleus) their establishment or a section of it for the purposes, among other things, of allowing

annual leave to the employees concerned or a majority of them, they may give in writing to such employees one month's notice (or, in the case of any employee engaged after giving of such notice, notice on the date of the employee's engagement) that the employer elects to apply the provisions of clause 22.7.

- (b) Where an employee has been given notice in accordance with clause 22.7(a) and the employee has:
  - (i) accrued sufficient annual leave to cover the full period of closing, the employee must take paid annual leave for the full period of closing;
  - (ii) insufficient accrued annual leave to cover the full period of closing, the employee must take paid annual leave to the full amount accrued and leave without pay for the remaining period of the closing; or
  - (iii) no accrued annual leave, the employee must take leave without pay for the full period of closing.
- (c) Public holidays that fall within the period of close down will be paid as provided for in this award and will not count as a day of annual leave or leave without pay.

## **22.8 Cashing out of annual leave**

- (a) Paid annual leave must not be cashed out except in accordance with an agreement under clause 22.8.
- (b) Each cashing out of a particular amount of paid annual leave must be the subject of a separate agreement under clause 22.8.
- (c) An employer and an employee may agree in writing to the cashing out of a particular amount of accrued paid annual leave by the employee.
- (d) An agreement under clause 22.8 must state:
  - (i) the amount of leave to be cashed out and the payment to be made to the employee for it; and
  - (ii) the date on which the payment is to be made.
- (e) An agreement under clause 22.8 must be signed by the employer and employee and, if the employee is under 18 years of age, by the employee's parent or guardian.
- (f) The payment must not be less than the amount that would have been payable had the employee taken the leave at the time the payment is made.
- (g) An agreement must not result in the employee's remaining accrued entitlement to paid annual leave being less than 4 weeks.
- (h) The maximum amount of accrued paid annual leave that may be cashed out in any period of 12 months is 2 weeks.
- (i) The employer must keep a copy of any agreement under clause 22.8 as an employee record.

NOTE 1: Under section 344 of the [Act](#), an employer must not exert undue influence or undue pressure on an employee to make, or not make, an agreement under clause 22.8.

NOTE 2: Under section 345(1) of the [Act](#), a person must not knowingly or recklessly make a false or misleading representation about the workplace rights of another person under clause 22.8.

NOTE 3: An example of the type of agreement required by clause 22.8 is set out at Schedule H—Agreement to Cash Out Annual Leave. There is no requirement to use the form of agreement set out at Schedule H—Agreement to Cash Out Annual Leave.

## **23. Personal/carer’s leave and compassionate leave**

Personal/carer’s leave and compassionate leave are provided for in the [NES](#).

## **24. Parental leave and related entitlements**

Parental leave and related entitlements are provided for in the [NES](#).

## **25. Community service leave**

Community service leave is provided for in the [NES](#).

## **26. Unpaid family and domestic violence leave**

Unpaid family and domestic violence leave is provided for in the [NES](#).

NOTE 1: Information concerning an employee’s experience of family and domestic violence is sensitive and if mishandled can have adverse consequences for the employee. Employers should consult with such employees regarding the handling of this information.

NOTE 2: Depending upon the circumstances, evidence that would satisfy a reasonable person of the employee’s need to take family and domestic violence leave may include a document issued by the police service, a court or family violence support service, or a statutory declaration.

## **27. Public holidays**

**27.1** Public holidays are provided for in the [NES](#).

**27.2** All work performed on a public holiday is deemed to be work in excess or outside of ordinary hours of duty and will be paid or compensated for in accordance with clause 21—Overtime and penalty rates.

### **27.3 Public holidays—process for substitution**

**(a)** An employer and employee may agree to substitute another day for a day that would otherwise be a public holiday under the NES.

- (b) An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the NES.

#### **27.4 Part-day public holidays**

For provisions in relation to part-day public holidays see Schedule I—Part-day Public Holidays

## **Part 7—Consultation and Dispute Resolution**

### **28. Consultation about major workplace change**

**28.1** If an employer makes a definite decision to make major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer must:

- (a) give notice of the changes to all employees who may be affected by them and their representatives (if any); and
- (b) discuss with affected employees and their representatives (if any):
  - (i) the introduction of the changes; and
  - (ii) their likely effect on employees; and
  - (iii) measures to avoid or reduce the adverse effects of the changes on employees; and
- (c) commence discussions as soon as practicable after a definite decision has been made.

**28.2** For the purposes of the discussion under clause 28.1(b), the employer must give in writing to the affected employees and their representatives (if any) all relevant information about the changes including:

- (a) their nature; and
- (b) their expected effect on employees; and
- (c) any other matters likely to affect employees.

**28.3** Clause 28.2 does not require an employer to disclose any confidential information if its disclosure would be contrary to the employer's interests.

**28.4** The employer must promptly consider any matters raised by the employees or their representatives about the changes in the course of the discussion under clause 28.1(b).

**28.5** In clause 28 **significant effects**, on employees, includes any of the following:

- (a) termination of employment; or
- (b) major changes in the composition, operation or size of the employer's workforce or in the skills required; or

- (c) loss of, or reduction in, job or promotion opportunities; or
- (d) loss of, or reduction in, job tenure; or
- (e) alteration of hours of work; or
- (f) the need for employees to be retrained or transferred to other work or locations; or
- (g) job restructuring.

**28.6** Where this award makes provision for alteration of any of the matters defined at clause 28.5, such alteration is taken not to have significant effect.

## **29. Consultation about changes to rosters or hours of work**

**29.1** Clause 29 applies if an employer proposes to change the regular roster or ordinary hours of work of an employee, other than an employee whose working hours are irregular, sporadic or unpredictable.

**29.2** The employer must consult with any employees affected by the proposed change and their representatives (if any).

**29.3** For the purpose of the consultation, the employer must:

- (a) provide to the employees and representatives mentioned in clause 29.2 information about the proposed change (for example, information about the nature of the change and when it is to begin); and
- (b) invite the employees to give their views about the impact of the proposed change on them (including any impact on their family or caring responsibilities) and also invite their representative (if any) to give their views about that impact.

**29.4** The employer must consider any views given under clause 29.3(b).

**29.5** Clause 29 is to be read in conjunction with any other provisions of this award concerning the scheduling of work or the giving of notice.

## **30. Dispute resolution**

**30.1** Clause 30 sets out the procedures to be followed if a dispute arises about a matter under this award or in relation to the [NES](#).

**30.2** The parties to the dispute must first try to resolve the dispute at the workplace through discussion between the employee or employees concerned and the relevant supervisor.

**30.3** If the dispute is not resolved through discussion as mentioned in clause 30.2, the parties to the dispute must then try to resolve it in a timely manner at the workplace through discussion between the employee or employees concerned and more senior levels of management, as appropriate.

**30.4** If the dispute is unable to be resolved at the workplace and all appropriate steps have been taken under clauses 30.2 and 30.3, a party to the dispute may refer it to the Fair Work Commission.

- 30.5** The parties may agree on the process to be followed by the Fair Work Commission in dealing with the dispute, including mediation, conciliation and consent arbitration.
- 30.6** If the dispute remains unresolved, the Fair Work Commission may use any method of dispute resolution that it is permitted by the [Act](#) to use and that it considers appropriate for resolving the dispute.
- 30.7** A party to the dispute may appoint a person, organisation or association to support and/or represent them in any discussion or process under clause 30.
- 30.8** While procedures are being followed under clause 30 in relation to a dispute:
- (a) work must continue in accordance with this award and the [Act](#); and
  - (b) an employee must not unreasonably fail to comply with any direction given by the employer about performing work, whether at the same or another workplace, that is safe and appropriate for the employee to perform.
- 30.9** Clause 30.8 is subject to any applicable work health and safety legislation.

## **Part 8—Termination of Employment and Redundancy**

### **31. Termination of employment**

NOTE: The [NES](#) sets out requirements for notice of termination by an employer. See sections 117 and 123 of the [Act](#).

#### **31.1 Notice of termination by an employee**

- (a) Clause 31.1 applies to all employees except those identified in sections 123(1) and 123(3) of the [Act](#).
- (b) An employee must give the employer notice of termination in accordance with **Table 1—Period of notice** of at least the period specified in column 2 according to the period of continuous service of the employee specified in column 1.

**Table 1—Period of notice**

<b>Column 1</b>	<b>Column 2</b>
<b>Employee’s period of continuous service with the employer at the end of the day the notice is given</b>	<b>Period of notice</b>
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

NOTE: The notice of termination required to be given by an employee is the same as that required of an employer except that the employee does not have to give additional notice based on the age of the employee.

- (c) In clause 31.1(b) **continuous service** has the same meaning as in section 117 of the [Act](#).
- (d) If an employee who is at least 18 years old does not give the period of notice required under clause 31.1(b), then the employer may deduct from wages due to the employee under this award an amount that is no more than one week's wages for the employee.
- (e) If the employer has agreed to a shorter period of notice than that required under clause 31.1(b), then no deduction can be made under clause 31.1(d).
- (f) Any deduction made under clause 31.1(d) must not be unreasonable in the circumstances.

### **31.2 Job search entitlement**

- (a) Where an employer has given notice of termination to an employee, the employee must be allowed time off without loss of pay of up to one day for the purpose of seeking other employment.
- (b) The time off under clause 31.2 is to be taken at times that are convenient to the employee after consultation with the employer.

## **32. Redundancy**

NOTE: Redundancy pay is provided for in the [NES](#). See sections 119 to 123 of the [Act](#).

### **32.1 Transfer to lower paid duties on redundancy**

- (a) Clause 32.1 applies if, because of redundancy, an employee is transferred to new duties to which a lower ordinary rate of pay applies.
- (b) The employer may:
  - (i) give the employee notice of the transfer of at least the same length as the employee would be entitled to under section 117 of the [Act](#) as if it were a notice of termination given by the employer; or
  - (ii) transfer the employee to the new duties without giving notice of transfer or before the expiry of a notice of transfer, provided that the employer pays the employee as set out in clause 32.1(c).
- (c) If the employer acts as mentioned in clause 32.1(b)(ii), the employee is entitled to a payment of an amount equal to the difference between the ordinary rate of pay of the employee (inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) for the hours of work the employee would have worked in the first role, and the ordinary rate of pay (also inclusive of all-purpose allowances and penalty rates applicable to ordinary hours) of the employee in the second role for the period for which notice was not given.

### **32.2 Employee leaving during redundancy notice period**

- (a)** An employee given notice of termination in circumstances of redundancy may terminate their employment during the minimum period of notice prescribed by section 117(3) of the [Act](#).
- (b)** The employee is entitled to receive the benefits and payments they would have received under clause 32 or under sections 119 to 123 of the [Act](#) had they remained in employment until the expiry of the notice.
- (c)** However, the employee is not entitled to be paid for any part of the period of notice remaining after the employee ceased to be employed.

### **32.3 Job search entitlement**

- (a)** Where an employer has given notice of termination to an employee in circumstances of redundancy, the employee must be allowed time off without loss of pay of up to one day each week of the minimum period of notice prescribed by section 117(3) of the [Act](#) for the purpose of seeking other employment.
- (b)** If an employee is allowed time off without loss of pay of more than one day under clause 32.3(a), the employee must, at the request of the employer, produce proof of attendance at an interview.
- (c)** A statutory declaration is sufficient for the purpose of clause 32.3(b).
- (d)** An employee who fails to produce proof when required under clause 32.3(b) is not entitled to be paid for the time off.
- (e)** This entitlement applies instead of clause 31.2.



## **Schedule A—Classification Structure and Definitions**

### **A.1 Definitions**

**A.1.1 Surveying** means the act or process of determining the form, contour, position, area, height, depth or any other similar particulars of the earth's surface, whether on land or water or of any natural or artificial features on, below or above any part of that surface or planning the position or the length and direction of the bounding lines of any part of that surface, or of any such natural or artificial features thereof and includes the making or obtaining of a plan of plans thereof.

**A.1.2** It includes the acquisition, management, interpretation and analysis of data; the portrayal and dissemination of derived information in written, graphical, numerical, digital, photographic or magnetic media; and associated consulting, design, and plan preparation. In addition and when performed by employees in the classifications listed in Schedule A—Classification Structure and Definitions, Surveying also includes administration, management and technical support activities.

**Surveyor** means an employee classified at Level 6 or above.

**Survey Technician** means an employee classified at Level 9, Level 8 or Level 7.

**Survey Assistant** means an employee classified at Level 12, Level 11 or Level 10.

**A.1.3** The words **or equivalent** where they appear in these definitions mean:

- A qualification recognised as equivalent by a State Training Authority or by a Registered Training Organisation registered by that Authority; or
- Equivalent skill and knowledge gained through on-the-job experience and/or relevant training which can be assessed using relevant competency standards and assessment procedures.

### **A.2 Accreditation and Regulation**

**A.2.1** Where registration under state or federal legislation is required to carry out particular types of surveying work (such as cadastral, mining, hydrographic surveying work) at any level, then such registration is mandatory for an employee employed at that level unless responsibility for the work is taken by another surveyor appropriately registered.

**A.2.2** Where duties/responsibilities as described in this Schedule A—Classification Structure and Definitions require supervision by a Licensed/Registered Surveyor, such duties/responsibilities must be undertaken with the appropriate supervision by a Licensed/Registered Surveyor as defined in Clause 2—Definitions.

### **A.3 Level 12 – Survey Assistant Level I (82% relativity)**

**Survey Assistant Level I** is a survey assistant who is capable of working in a team environment and who is aware of safe work practices.

#### **A.3.1 Minimum training and requirements**

A Survey Assistant Level I means an employee who holds no relevant qualification but is capable of assisting the surveyor or survey technician.

### **A.3.2 Duties**

Indicative duties under supervision include:

- assisting in field work under direct supervision which may involve the setting up of basic field equipment;
- maintaining and cleaning basic survey equipment; and
- performing general office duties under instruction.

## **A.4 Level 11 – Survey Assistant Level II (90% relativity)**

**Survey Assistant Level II** is a survey assistant who performs work above and beyond the skills of an employee at Level 12 – Survey Assistant Level I and who is capable of working in a team environment and who is aware of safe work practices.

### **A.4.1 Minimum training and requirements**

A Survey Assistant Level II means a person who has completed a Certificate II or equivalent.

### **A.4.2 Duties**

Indicative duties, under supervision, include:

- setting up surveying instruments;
- maintaining and cleaning basic survey instruments;
- reducing levels; and
- undertaking general office duties.

## **A.5 Level 10 – Survey Assistant Level III (100% relativity)**

**Survey Assistant Level III** is a survey assistant who performs work above and beyond the skills of an employee at Level 11 – Survey Assistant Level II and who is able to show initiative in the performance of survey tasks and is able to adapt to form part of a team for the purpose of performing surveys.

### **A.5.1 Minimum training and requirements**

A Survey Assistant Level III means a person who:

- has completed 85% towards a Certificate III; or
- equivalent.

### **A.5.2 Duties**

Indicative duties, under supervision include:

- measuring accurately using the correct techniques;
- assisting on field surveys;
- understanding and performing basic survey tasks under instruction;

- reducing basic field measurements; and
- maintaining and calibrating survey equipment.

## **A.6 Level 9 – Survey Technician Level I (110% relativity)**

**Survey Technician Level I** is a survey technician who works above and beyond an employee at Level 10 – Survey Assistant Level III and who works in a team environment or performs their duties under regular supervision and who possesses a basic understanding of the down loading of field data into computers and basic keyboard skills. In addition employees at this level possess basic mathematical skills enabling the employee to understand EDM measurement and booking techniques and to perform the duties listed below.

### **A.6.1 Minimum training and requirements**

A Survey Technician Level I means a person who:

- has completed 40% towards an Advanced Diploma or 60% towards a Diploma; or
- has completed 85% towards a Certificate IV; or
- equivalent.

### **A.6.2 Duties**

Indicative duties include:

- the competent reduction of levels;
- the accurate transfer of survey information;
- basic plan preparation;
- accurate angular observation;
- efficient field techniques;
- responsibility for the acquisition of data in the field under the immediate supervision of a qualified surveyor or their appointee; and
- measuring accurately.

## **A.7 Level 8 – Survey Technician Level II (125% relativity)**

**Survey Technician Level II** is a survey technician who works above and beyond an employee at Level 9 – Survey Technician Level I and to the level of their training and who is able to use survey based computer programmes. In addition an employee at this level possesses an overall knowledge and understanding of the principles of the systems and equipment on which they are required to carry out their tasks.

### **A.7.1 Minimum training and requirements**

A Survey Technician Level II means a person who:

- has completed 50% towards an Advanced Diploma or 85% towards a Diploma;
- is an (entry point) Professional Surveyor (3 year graduate); or

- equivalent.

#### **A.7.2 Duties**

Indicative duties include:

- providing technical guidance or advice within the scope of this level;
- providing limited technical reports on assigned tasks as directed within the scope of this level;
- carrying out limited engineering surveys to the required accuracy under immediate supervision or direction;
- preparing basic plans using either manual or computer based methods under supervision; and
- undertaking survey computations.

### **A.8 Level 7 – Surveying Technician Level III (130% relativity)**

**Surveying Technician Level III** is a survey technician who works above and beyond an employee at Level 8 – Survey Technician Level II and to the level of their training and who is able to use survey based computer programmes. In addition an employee at this level will have an overall knowledge and understanding of the principles of the systems and equipment on which they are required to carry out their tasks and a basic knowledge of those aspects of civil engineering, geology, soil and fauna/environmental disciplines relevant for their surveying practice.

#### **A.8.1 Minimum training and requirements**

A Survey Technician III (including an acting or part-time party leader) means a person who:

- has completed a Diploma; or
- is a Professional Surveyor who has completed a 4 year degree course, or 3 year degree course plus one year experience; or
- equivalent.

#### **A.8.2 Duties**

Indicative duties include:

- providing technical guidance or advice within the scope of this level;
- preparing reports of a technical nature on specific tasks or assignments as directed or within the scope of discretion at this level;
- assisting in the provision of on-the-job training in conjunction with supervisors and trainers;
- carrying out surveys to the required accuracy under supervision or direction;
- preparing plans, using either manual or computer based methods under supervision;

- survey computations;
- obtaining survey information and interpreting this information for drawing, computation or survey needs; and
- being able to use survey based computer programmes.

## **A.9 Level 6 – Surveyor Level I (135% relativity)**

**Surveyor Level I** is a surveyor who works above and beyond an employee at Level 7 – Surveying Technician Level III, and whose duties may include document research, field and office work and checks on their own work and the leading of groups carrying out field or office work under controlled supervision. Work is carried out under prescribed methods and standards and is reviewed for validity, adequacy, and methodology.

### **A.9.1 Minimum training and requirements**

A Surveyor Level I (including a Party Leader (Supervised/Technical) Surveyor) means an employee who:

- has completed 80% of an Advanced Diploma; or
- is a Professional Surveyor who has completed a degree and experience; or
- equivalent.

### **A.9.2 Duties**

Indicative duties include:

- whilst working under controlled supervision, gathering or setting out field data and collating the resultant or separate information using computer techniques;
- preparing work sheets for engineering surveys and applying all relevant checks to ensure quality of computed work;
- preparing plans to an acceptable standard;
- clearly setting out all computations and checks to surveying work for checking by a Professional Surveyor;
- assisting in the training of staff, maintenance of equipment and office records; and
- assisting in the development of new techniques and procedures.

## **A.10 Level 5 – Surveyor Level II (145% relativity)**

**Surveyor Level II** (including a Party-Leader) is a surveyor who works above and beyond an employee at Level 6- Surveyor Level I, and who, whilst not requiring supervision for daily tasks, is still responsible to a more senior Professional Surveyor. A Surveyor Level II is able to perform surveys, to the required accuracy for the various types of surveys under direction of a co-ordinator and/or Professional Surveyor. Surveying assignments at this level require judgment with guidance available from more senior surveyors on unusual features.

### **A.10.1 Minimum training and requirements**

A Surveyor Level II (including a Party-Leader) means an employee who:

- has completed an Advanced Diploma; or
- is a Professional Surveyor who has completed a degree and relevant experience; or
- equivalent.

#### **A.10.2 Duties**

Indicative duties include:

- interpreting survey information to enable field surveys to relate to previous surveys;
- making adoptions for boundary definitions and present these adoptions with evidence to a Licensed/Registered Surveyor for ratification; and
- preparing reports on the manner in which the surveys were conducted and justification of results.

### **A.11 Level 4 – Surveyor Level III (150% relativity)**

**Surveyor Level III** is a surveyor who acts above and beyond an employee at Level 5 – Surveyor Level II and, whilst not requiring supervision in the performance of these duties is still responsible to a more senior Professional Surveyor. Work is carried out without detailed supervision, but with guidance on unusual features based on project complexity, and the surveyor is engaged on more complex surveying assignments requiring substantial judgement.

#### **A.11.1 Minimum training and requirements**

A Surveyor Level III means an employee who has completed:

- a 3 or 4 year degree; or
- an Advanced Diploma and sufficient additional training so as to enable the employee to meet the requirements of the relevant classification definition and to perform work within the scope of this level; or
- accredited education and training so as to reach a standard equivalent to a 3 or 4 year degree and who is required to perform the work set out; or
- equivalent.

#### **A.11.2 Duties**

Indicative duties include:

- to the level of their experience, co-ordinating other field parties in the performance of their duties;
- carrying out field surveys to a professional standard to the satisfaction of the employer;
- contributing to the improvement of field and office techniques;
- managing computer files and job flow patterns;
- ensuring quality assurance for the areas directly under their control;

- preparing detailed reports on survey results;
- being of such professional attitude and demeanour to enable themselves to represent their employer at meetings; and
- being technically competent in all areas relating to the employee's speciality.

## **A.12 Level 3 – Surveyor Level IV (160% relativity)**

**Surveyor Level IV** means a surveyor who has a mature approach to the completion of survey projects and who acts above and beyond an employee at Level 4 – Surveyor Level III. Supervision received is in broad objectives such that direction from management will enable the surveyor to determine whether targets are being reached.

Employees at this level are required to be proficient in and maintain their knowledge of, aspects of law and technology relating to the field of surveying in which the employee practices. At this level an employee's work is carried out within broad guidelines requiring conformity with overall objectives, project targets, relative priorities and necessary cooperation with other stakeholder units. In addition, employees at this level will have responsibility for improving the skills of those over whom they have direct control and have responsibility for conducting regular checks on Quality Control procedures in place for the surveyor's place of equipment.

A Surveyor Level IV will include a Licensed/Registered Surveyor who has successfully completed all necessary requirements for registration. Such a qualification however is not mandatory for work at this level.

### **A.12.1 Minimum training and requirements**

A Surveyor Level IV (including an experienced Professional Surveyor—Experienced/Licensed) means an employee who has completed:

- a 3 or 4 year degree; or
- an Advanced Diploma and sufficient additional training so as to enable the employee to meet the requirements of the relevant classification definition and to perform work within the scope of this level; or
- accredited education and training so as to reach a standard equivalent to a 3 or 4 year degree and who is required to perform the work set out; or
- equivalent.

## **A.13 Level 2 – Surveyor Level V (180% relativity)**

**Surveyor Level V** is a senior surveyor whose normal duties require the application of mature surveying knowledge with scope for individual accomplishment and co-ordination of difficult and responsible surveying alignments. They deal with problems for which it is necessary to modify established guides and devise new approaches.

Employees at this level are responsible for the management of complex projects and some business development tasks. They are able to work at an advanced level in project resource allocation, supervision and coordination including liaison with local governments, government agencies and clients, and determination of project technical and financial requirements with a minimum of supervision.

Duties are assigned only in terms of broad objectives, and are reviewed for policy, soundness of approach, accomplishment and general effectiveness. They may plan, direct and co-ordinate the work of other professional surveyors and may also supervise other professional and technical staff.

#### **A.13.1 Minimum training and requirements**

A Surveyor Level V (including a Manager Project/Specialist) means an employee who has completed:

- a 3 or 4 year degree to qualify as a Professional surveyor; or
- additional accredited education and training so as to reach a standard equivalent to a 3 or 4 year degree and who is required to perform the work set out above; or
- equivalent.

#### **A.14 Level 1 – Surveyor Level VI (210% relativity)**

**Surveyor Level VI** means a senior surveyor who is required to perform professional surveying work involving considerable independence in approach and demanding a considerable degree of originality, ingenuity and judgment. They require knowledge of more than one field of surveying or are an expert in a particular field of surveying.

Their normal duties may include those included in Level 2 – Surveyor Level V plus strategic business management and development. They are able to work at an advanced level in resource allocation, supervision of staff, complex projects and liaison with local government and other agencies without supervision and make independent decisions on surveying policies and technical functions. Duties are assigned only in terms of broad objectives and are reviewed for policy, soundness of approach, accomplishment and general effectiveness.

#### **A.14.1 Minimum training and requirements**

A Surveyor Level VI (including a Manager Business/Specialist) means an employee who has completed:

- a 3 or 4 year degree to qualify as a Professional surveyor; or
- accredited education and training so as to reach a standard equivalent to a 3 or 4 year degree and who is required to perform the work set out above; or
- equivalent.

#### **A.15 Professional surveyor—graduate**

A Professional surveyor—graduate, is a Professional surveyor (as defined) and will mean a person who has successfully completed a course of studies approved by the Surveyor's Board or the Surveying and Spatial Sciences Institute.

#### **A.15.1 Duties**

- (a) The surveyor undertakes initial professional surveying tasks of limited scope and complexity, such as minor phases of broader assignments, in office, plant, field or laboratory work.



- (b) Under supervision from higher level Professional surveyors as to method of approach and requirements, the Professional surveyor—graduate performs normal professional surveying work and exercises individual judgment and initiative in the application of surveying principles, techniques and methods.
- (c) In assisting more senior professional surveyors by carrying out tasks requiring accuracy and adherence to prescribed methods or surveying analysis, design or computation, the surveyor draws upon advanced techniques and methods learned during and after the undergraduate course.
- (d) Training, development and experience using a variety of standard surveying methods and procedures, enable the Professional surveyor—graduate to develop increasing professional judgment and apply it progressively to more difficult tasks at the Level 3 - Surveyor Level IV.
- (e) Decisions are related to tasks performed, relying upon precedent or defined procedures for guidance. Recommendations are related to solution of problems in connection to the tasks performed.
- (f) Work is reviewed by higher level Professional surveyors for validity, adequacy, methods and procedures. With professional development and experience work receives less review, and the Professional surveyor—graduate progressively exercises more individual judgment until the level of competence is achieved.
- (g) The Professional surveyor—graduate may assign and check work of technical staff assigned to work on a common project.

#### A.15.2 Progression to Level 3—Professional surveyor/Licensed surveyor

The Professional surveyor—graduate will receive increments upon the attainment of skills, and demonstration of competence which fulfill the requirements of the following levels in the classification structure as outlined in clause A.15.2.

##### (a) Graduate 3 year course

	<b>Level</b>
Entry point – Survey Technician Level II (125% relativity)	8
Survey Technician Level III (130% relativity)	7
Surveyor Level I (135% relativity)	6
Surveyor Level II (145% relativity)	5
Surveyor Level III (150% relativity)	4

##### (b) Graduate 4 year course

	<b>Level</b>
Entry point – Survey Technician Level III (130% relativity)	7
Surveyor Level I (135% relativity)	6
Surveyor Level II (145% relativity)	5
Surveyor Level III (150% relativity)	4

## **A.16 Relativities**

The percentage wage relativities to Level 10 in the classification definitions in Clause Schedule A—Classification Structure and Definitions reflect the percentages prescribed in 1990 in *Re Metal Industry Award 1984—Part I* (M0039 Print J2043) and in the *Land Surveyors General Award 1998* (AP787068CRV Print N4014). The minimum wages in this award do not reflect these relativities because some wage increases since 1990 have been expressed in dollar amounts rather than percentages and as a result have altered the relativities.

## Schedule B—Summary of Hourly Rates of Pay

### B.1 Full-time and part-time adult employees

#### B.1.1 Full-time and part-time employees—ordinary and penalty rates

	Ordinary hours	Public holiday
	% of minimum hourly rate	
	100%	250%
	\$	\$
Level 12	20.06	50.14
Level 11	21.20	52.99
Level 10	22.70	56.74
Level 9	24.12	60.30
Level 8	26.02	65.05
Level 7	26.55	66.38
Level 6	27.27	68.16
Level 5	28.69	71.74
Level 4	29.41	73.53
Level 3	30.69	76.74
Level 2	33.55	83.88
Level 1	37.83	94.58

#### B.1.2 Full-time and part-time employees—overtime rates

	Monday to Saturday		Sunday	Public holiday
	first 3 hours	after 3 hours		
	% of minimum hourly rate			
	150%	200%	200%	250%
	\$	\$	\$	\$
Level 12	30.08	40.11	40.11	50.14
Level 11	31.80	42.39	42.39	52.99
Level 10	34.05	45.39	45.39	56.74
Level 9	36.18	48.24	48.24	60.30
Level 8	39.03	52.04	52.04	65.05
Level 7	39.83	53.11	53.11	66.38
Level 6	40.90	54.53	54.53	68.16
Level 5	43.04	57.39	57.39	71.74
Level 4	44.12	58.82	58.82	73.53

	Monday to Saturday		Sunday	Public holiday
	first 3 hours	after 3 hours		
	<b>% of minimum hourly rate</b>			
	<b>150%</b>	<b>200%</b>	<b>200%</b>	<b>250%</b>
	<b>\$</b>	<b>\$</b>	<b>\$</b>	<b>\$</b>
Level 3	46.04	61.39	61.39	76.74
Level 2	50.33	67.10	67.10	83.88
Level 1	56.75	75.66	75.66	94.58

## B.2 Casual adult employees—ordinary and penalty rates

A Full Bench has been constituted in [AM2017/51](#) to deal with the issue of overtime for casuals. The rates in the tables below dealing with overtime for casuals will not become operative until a decision is made in that matter and only to the extent that they are consistent with the decision.

	Ordinary hours	Public holiday
	<b>% of minimum hourly rate</b>	
	<b>125%</b>	<b>275%</b>
	<b>\$</b>	<b>\$</b>
Level 12	25.07	55.15
Level 11	26.50	58.29
Level 10	28.37	62.42
Level 9	30.15	66.33
Level 8	32.53	71.56
Level 7	33.19	73.02
Level 6	34.08	74.98
Level 5	35.87	78.91
Level 4	36.76	80.88
Level 3	38.37	84.41
Level 2	41.94	92.26
Level 1	47.29	104.04

## Schedule C—Summary of Monetary Allowances

See clause 19—Allowances for full details of allowances payable under this award.

### C.1 Wage-related allowances

There are no wage-related allowances in this award.

### C.2 Expense-related allowances

C.2.1 The following expense-related allowances will be payable to employees in accordance with clause 19—Allowances:

Allowance	Clause	\$	Payable
Meal allowance—more than 2 hours' overtime after usual finishing time	19.2(a)	12.76	per first and/or subsequent rest break
Meal allowance— more than 4 hours' work on Sunday or public holiday	19.2(b)	12.76	per first and/or subsequent rest break
Vehicle allowance—using own vehicle	19.7	0.78	per km

### C.2.2 Adjustment of expense-related allowances

- (a) At the time of any adjustment to the [standard rate](#), each expense-related allowance will be increased by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (b) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index (Cat No. 6401.0), as follows:

Allowance	Applicable Consumer Price Index figure
Meal allowance	Take away and fast foods sub-group
Vehicle allowance	Private motoring sub-group

## **Schedule D—School-based Apprentices**

- D.1** This schedule applies to school-based apprentices. A school-based apprentice is a person who is undertaking an apprenticeship in accordance with this schedule while also undertaking a course of secondary education.
- D.2** A school-based apprenticeship may be undertaken in the trades covered by this award under a training agreement or contract of training for an apprentice declared or recognised by the relevant State or Territory authority.
- D.3** The relevant minimum wages for full-time junior and adult apprentices provided for in this award, calculated hourly, will apply to school-based apprentices for total hours worked including time deemed to be spent in off-the-job training.
- D.4** For the purposes of clause D.3, where an apprentice is a full-time school student, the time spent in off-the-job training for which the apprentice must be paid is 25% of the actual hours worked each week on-the-job. The wages paid for training time may be averaged over the semester or year.
- D.5** A school-based apprentice must be allowed, over the duration of the apprenticeship, the same amount of time to attend off-the-job training as an equivalent full-time apprentice.
- D.6** For the purposes of this schedule, off-the-job training is structured training delivered by a Registered Training Organisation separate from normal work duties or general supervised practice undertaken on the job.
- D.7** The duration of the apprenticeship must be as specified in the training agreement or contract for each apprentice but must not exceed 6 years.
- D.8** School-based apprentices progress through the relevant wage scale at the rate of 12 months progression for each 2 years of employment as an apprentice.
- D.9** The apprentice wage scales are based on a standard full-time apprenticeship of 4 years (unless the apprenticeship is of 3 years duration). The rate of progression reflects the average rate of skill acquisition expected from the typical combination of work and training for a school-based apprentice undertaking the applicable apprenticeship.
- D.10** If an apprentice converts from school-based to full-time, all time spent as a full-time apprentice will count for the purposes of progression through the relevant wage scale in addition to the progression achieved as a school-based apprentice.
- D.11** School-based apprentices are entitled pro rata to all of the other conditions in this award.

## Schedule E—Supported Wage System

**E.1** This schedule defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award.

**E.2** In this schedule:

**approved assessor** means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual's productive capacity within the supported wage system

**assessment instrument** means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

**disability support pension** means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991* (Cth), as amended from time to time, or any successor to that scheme

**relevant minimum wage** means the minimum wage prescribed in this award for the class of work for which an employee is engaged

**supported wage system (SWS)** means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: [www.jobaccess.gov.au](http://www.jobaccess.gov.au)

**SWS wage assessment agreement** means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

### **E.3 Eligibility criteria**

**E.3.1** Employees covered by this schedule will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a disability support pension.

**E.3.2** This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

## **E.4 Supported wage rates**

**E.4.1** Employees to whom this schedule applies will be paid the applicable percentage of the relevant minimum wage according to the following schedule:

<b>Assessed capacity (clause E.5)</b>	<b>Relevant minimum wage</b>
<b>%</b>	<b>%</b>
10	10
20	20
30	30
40	40
50	50
60	60
70	70
80	80
90	90

**E.4.2** Provided that the minimum amount payable must be not less than **\$87** per week.

**E.4.3** Where an employee's assessed capacity is 10%, they must receive a high degree of assistance and support.

## **E.5 Assessment of capacity**

**E.5.1** For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the SWS by an approved assessor, having consulted the employer and employee and, if the employee so desires, a union which the employee is eligible to join.

**E.5.2** All assessments made under this schedule must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the [Act](#).

## **E.6 Lodgement of SWS wage assessment agreement**

**E.6.1** All SWS wage assessment agreements under the conditions of this schedule, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

**E.6.2** All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work Commission to the union by certified mail and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.



## **E.7 Review of assessment**

The assessment of the applicable percentage should be subject to annual or more frequent review on the basis of a reasonable request for such a review. The process of review must be in accordance with the procedures for assessing capacity under the SWS.

## **E.8 Other terms and conditions of employment**

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of this schedule will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

## **E.9 Workplace adjustment**

An employer wishing to employ a person under the provisions of this schedule must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

## **E.10 Trial period**

**E.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this schedule for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.

**E.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum wage for a continuing employment relationship will be determined.

**E.10.3** The minimum amount payable to the employee during the trial period must be no less than \$87 per week.

**E.10.4** Work trials should include induction or training as appropriate to the job being trialled.

**E.10.5** Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment will be entered into based on the outcome of assessment under clause E.5.

## Schedule F—Agreement for Time Off Instead of Payment for Overtime

Link to PDF copy of [Agreement for Time Off Instead of Payment for Overtime](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee may take time off instead of being paid for the following amount of overtime that has been worked by the employee:**

Date and time overtime started: \_\_\_/\_\_\_/20\_\_\_ am/pm

Date and time overtime ended: \_\_\_/\_\_\_/20\_\_\_ am/pm

Amount of overtime worked: \_\_\_\_\_ hours and \_\_\_\_\_ minutes

**The employer and employee further agree that, if requested by the employee at any time, the employer must pay the employee for overtime covered by this agreement but not taken as time off. Payment must be made at the overtime rate applying to the overtime when worked and must be made in the next pay period following the request.**

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_/\_\_\_/20\_\_\_

## Schedule G—Agreement to Take Annual Leave in Advance

Link to PDF copy of [Agreement to Take Annual Leave in Advance](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

**The employer and employee agree that the employee will take a period of paid annual leave before the employee has accrued an entitlement to the leave:**

The amount of leave to be taken in advance is: \_\_\_\_\_ hours/days

The leave in advance will commence on: \_\_\_ / \_\_\_ /20 \_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

*[If the employee is under 18 years of age - include:]*

**I agree that:**

**if, on termination of the employee's employment, the employee has not accrued an entitlement to all of a period of paid annual leave already taken under this agreement, then the employer may deduct from any money due to the employee on termination an amount equal to the amount that was paid to the employee in respect of any part of the period of annual leave taken in advance to which an entitlement has not been accrued.**

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

## Schedule H—Agreement to Cash Out Annual Leave

Link to PDF copy of [Agreement to Cash Out Annual Leave](#).

Name of employee: \_\_\_\_\_

Name of employer: \_\_\_\_\_

### **The employer and employee agree to the employee cashing out a particular amount of the employee's accrued paid annual leave:**

The amount of leave to be cashed out is: \_\_\_\_\_ hours/days

The payment to be made to the employee for the leave is: \$ \_\_\_\_\_ subject to deduction of income tax/after deduction of income tax (strike out where not applicable)

The payment will be made to the employee on: \_\_\_ / \_\_\_ /20 \_\_\_

Signature of employee: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

Name of employer representative: \_\_\_\_\_

Signature of employer representative: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

*Include if the employee is under 18 years of age:*

Name of parent/guardian: \_\_\_\_\_

Signature of parent/guardian: \_\_\_\_\_

Date signed: \_\_\_ / \_\_\_ /20 \_\_\_

## **Schedule I—Part-day Public Holidays**

- I.1** This schedule operates in conjunction with award provisions dealing with public holidays.
- I.2** Where a part-day public holiday is declared or prescribed between 7.00 pm and midnight on Christmas Eve (24 December in each year) or New Year's Eve (31 December in each year) the following will apply on Christmas Eve and New Year's Eve and will override any provision in this award relating to public holidays to the extent of the inconsistency:
- (a)** All employees will have the right to refuse to work on the part-day public holiday if the request to work is not reasonable or the refusal is reasonable as provided for in the [NES](#).
  - (b)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of exercising their right under the [NES](#) does not work, they will be paid their ordinary rate of pay for such hours not worked.
  - (c)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight but as a result of being on annual leave does not work, they will be taken not to be on annual leave between those hours of 7.00 pm and midnight that they would have usually been rostered to work and will be paid their ordinary rate of pay for such hours.
  - (d)** Where a part-time or full-time employee is usually rostered to work ordinary hours between 7.00 pm and midnight, but as a result of having a rostered day off (RDO) provided under this award, does not work, the employee will be taken to be on a public holiday for such hours and paid their ordinary rate of pay for those hours.
  - (e)** Where an employee works any hours between 7.00pm and midnight they will be entitled to the appropriate public holiday penalty rate (if any) in this award for those hours worked.
  - (f)** An employee not rostered to work between 7.00 pm and midnight, other than an employee who has exercised their right in accordance with clause I.2(a), will not be entitled to another day off, another day's pay or another day of annual leave as a result of the part-day public holiday.
  - (g)** Nothing in this schedule affects the right of an employee and employer to agree to substitute public holidays.
- I.3** An employer and employee may agree to substitute another part-day for a part-day that would otherwise be a part-day public holiday under the [NES](#).
- I.4** This schedule is not intended to detract from or supplement the [NES](#).